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LU, KUEN S

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/736,452	<b>Applicant(s)</b> BOBROVSKIY ET AL.	
	<b>Examiner</b> KUEN S. LU	<b>Art Unit</b> 2167	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-23 is/are rejected.
- 7) ☒ Claim(s) 12, 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The Action is responsive to Applicant's Amendment filed April 17, 2008. Recognized is amendments made to claims 1 and 13.
2. As to Applicant's Arguments/Remarks filed April 17, 2008, have been fully considered. Please see discussions in the Paragraph "**Response to Arguments**".
3. Please note claims 1-24 in the application have been examined, claims 1-11 and 13-23 are rejected, claims 12 and 24 are objected and claims 1-24 are pending.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

- 4.1. Claims 1-11 and 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Clements et al. (U.S. Patent Application 2002/0147739, hereafter "Clements") in view of Plourde, JR. et al. (U.S. Patent Application 2003/0110504, hereafter "Plourde").

As per claim 1, Clements teaches “A method of storing streamed presentation data within a container file” (See Fig. 4 and [0078] where a container file has a root storage to include streams, files, objects and attributes).

Clements does not explicitly teach that the method is “executing on a consumer digital content playback device”.

However, Wenocur teaches streaming data between users and receiving/sending story servers for streamed story to playback at a story playback engine at the client site (See Fig. 4, [0149]-[0150] and [0163]).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine the teaching of Wenocur with Clements reference because Wenocur teaches an architecture providing security and authorization for media content distribution and access while Clements is dedicated to tracking storage of content media for delivery to users, and the combined teaching would have provided security and authorization for Clements' system to store or distribute media contents.

The combined teaching of Wenocur and Clements references further teaches the following:

“receiving one or more data streams from each of one or more presentation sources within a presentation” (See Clements: [0055] where presentations of document distributors, free or fee-based users access a secure document repository for uploading and downloading files, the streamed data, into and from a container file, a presentation,

in which users utilize networked computer, PDA and mobile or wireless digital phone);  
and  
“creating within the container file, a virtual file for each of the one or more presentation sources” (See Clements: [0054], lines 7-12 where document distributor users store documents in a single container file and at [0095] and [0085], lines 10-18 where virtual files including track log and document properties for each document is created to track document events and describe information related to the document, including document name).

Concerning “temporarily storing first data associated with a first data stream of a first presentation source in association with a first virtual file corresponding to the presentation source”, Clements teaches a temporary file created in the control module and a storage module is configured to support and enable the control module to access and retrieve data in the container file at [0075] and [0068] and further teaches users of various presentations may store data in different container file (See Clements: [0054], lines 7-12).

The combined teaching of Wenocur and Clements references does not explicitly teach that the temporary file stores data on temporary basis for user's uploading or downloading file data.

However, Plourde teaches utilizing time shift buffer space to temporarily store content instance files in time shifting manner (See Page [00089], last 11 lines).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine the teaching of Plourde with Wenocur and

Clements references by implementing a secure document repository to accommodate a delivery of specific type of documents to a specific category of users because both reference are directed to media content distribution and the combined teaching of the references would have provided a media distribution system capable of accurately calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories.

The combined teaching of the Plourde, Wenocur and Clements references further teaches the following:

“determining a container file size of the container file” (See Clements: [0024] where size of container file is tracked once when the file is created);

“temporarily storing additional data from the first data stream in place of at least a portion of the first data if the container file size is within a predetermined range of an identified maximum buffer size” (See Plourde: Page 11, [0090] where next media content is stored in the clusters of time shift buffer to overwrite previous content); and

“rendering at least one of said one or more data streams” (See Clements: [0055] where users access a secure document repository for uploading and downloading files, the streamed data, into and from a container file).

As per claim 13, Clements teaches “A machine readable storage medium having stored thereon machine executable instructions, which when executed operate to implement the method” (See Fig. 4 and [0078] where a container file has a root storage to include streams, files, objects and attributes).

Clements does not explicitly teach that the method is “executed on a consumer digital content playback device”.

However, Wenocur teaches streaming data between users and receiving/sending story servers for streamed story to playback at a story playback engine at the client site (See Fig. 4, [0149]-[0150] and [0163]).

It would have been obvious to one having ordinary skill in the art at the time of the applicant’s invention was made to combine the teaching of Wenocur with Clements reference because Wenocur teaches an architecture providing security and authorization for media content distribution and access while Clements is dedicated to tracking storage of content media for delivery to users, and the combined teaching would have provided security and authorization for Clements’ system to store or distribute media contents.

The combined teaching of Wenocur and Clements references further teaches the following:

“receiving one or more data streams from each of one or more presentation sources within a presentation” (See Clements: [0055] where presentations of document distributors, free or fee-based users access a secure document repository for uploading and downloading files, the streamed data, into and from a container file, a presentation, in which users utilize networked computer, PDA and mobile or wireless digital phone); and

“creating within a container file, a virtual file for each of the one or more presentation sources” (See Clements: [0054], lines 7-12 where document distributor users store

documents in a single container file and at [0095] and [0085], lines 10-18 where virtual files including track log and document properties for each document is created to track document events and describe information related to the document, including document name).

Concerning “temporarily storing first data associated with a first data stream of a first presentation source in association with a first virtual file corresponding to the presentation source”, Clements teaches a temporary file created in the control module and a storage module is configured to support and enable the control module to access and retrieve data in the container file at [0075] and [0068] and further teaches users of various presentations may store data in different container file (See Clements: [0054], lines 7-12).

The combined teaching of Wenocur and Clements references does not explicitly teach that the temporary file stores data on temporary basis for user's uploading or downloading file data.

However, Plourde teaches utilizing time shift buffer space to temporarily store content instance files in time shifting manner (See Page [00089], last 11 lines).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's invention was made to combine the teaching of Plourde with Wheocur and Clements references by implementing a secure document repository to accommodate a delivery of specific type of documents to a specific category of users because both reference are directed to media content distribution and the combined teaching of the references would have provided a media distribution system capable of accurately



calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories.

The combined teaching of the Plourde, Wenocur and Clements references further teaches the following:

“determining a container file size of the container file” (See Clements: [0024] where size of container file is tracked once when the file is created);

“temporarily storing additional data from the first data stream in place of at least a portion of the first data if the container file size is within a predetermined range of an identified maximum buffer size” (See Plourde: Page 11, [0090] where next media content is stored in the clusters of time shift buffer to overwrite previous content); and

“rendering at least one of said one or more data streams” (See Clements: [0055] where users access a secure document repository for uploading and downloading files, the streamed data, into and from a container file).

As per claims 2 and 14, the combined teaching of the Plourde, Wenocur and Clements references further teaches “the additional data from the first data stream is stored in place of at least a portion of the first data if the container file size is equal to or exceeds the identified maximum buffer size” (See Plourde: Page 11, [0090] where the media content stored in the clusters of time shift buffer is overwritten and deleted, note buffering algorithms are applied when incoming data stream size is greater than that of free space).

As per claims 3 and 15 the combined teaching of the Plourde, Wenocur and Clements references further teaches the following:

“temporarily storing second data associated with a second data stream of the first presentation source in association with the first virtual file” (See Plourde: Page 11, [0089] where succeeding clusters for temporarily buffered media content instance files are streamed and stored in time shift buffer space); and

“temporarily storing additional data from the second data stream in place of at least a portion of the second data stored in association with the first virtual file if the container file size is within the predetermined range of the identified maximum buffer size” (See Plourde: Page 11, [0090] where the media content stored in the clusters of time shift buffer is overwritten and deleted, note buffering algorithms are applied when subsequent incoming data stream size is greater than that of free space).

As per claims 4 and 16, the combined teaching of the Plourde, Wenocur and Clements references further teaches “rendering one of the first and second data streams in real-time contemporaneous with the storing of at least one of the first and second data streams” (See Plourde: Page 5, [0052] and Page 10, [0085] wherein real-time operating system environment multiple simultaneous data transfer operations for moving media content from cache to storage, and receiving new content and storing in cache are effectively orchestrated).

As per claims 5 and 17 the combined teaching of the Plourde, Wenocur and Clements references further teaches the following:

“temporarily storing data associated with a third data stream of a second presentation source in association with a second virtual file” (See Plourde: Page 11, [0089] where succeeding clusters for temporarily buffered media content instance files are streamed and stored in time shift buffer space); and

“temporarily storing additional data from the third data stream in place of at least a portion of the data stored in association with the second virtual file if the container file size is within the predetermined range of the identified maximum buffer size” (See Plourde: Page 11, [0090] where the media content stored in the clusters of time shift buffer is overwritten and deleted, note buffering algorithms are applied when subsequent incoming data stream size is greater than that of free space).

As per claims 6 and 18, the combined teaching of the Plourde, Wenocur and Clements references further teaches “the maximum buffer size is proportional to an amount of time indicated via a user interface” (See Plourde: Page 12, [0097] where capacity of time shift buffer is assumed and estimated based on duration of media content instance time, for example 3-4 hours).

As per claims 7 and 19, the combined teaching of the Plourde, Wenocur and Clements references further teaches “the maximum buffer size is dynamically increased during the storing of data from the first data stream” (See Plourde: Page 12, [0097]

where time shift buffer size is set and free space is tracked, and Clements: [0024] where files delivered to a container file is tracked).

As per claims 8 and 20, the combined teaching of the Plourde, Wenocur and Clements references further teaches “the first data and additional data are stored in a native packet format prior to a decoding process” (See Plourde: Page 6, [0063] where compressed audio and video streams are produced in accordance with the syntax and semantics of a designated audio and video coding method).

As per claims 9 and 21 the combined teaching of the Plourde, Wenocur and Clements references further teaches the following:

“at least a first data block” (See Clements: [0018] where all storage resource allocated is tracked); and

“a file descriptor block containing at least a seek index and a seek index granularity, wherein the seek index indicates a plurality of equally distributed data blocks within the corresponding virtual file and the granularity indicates a size for each of the data blocks” (See Plourde: Fig. 3C, Page 10, [0088] and Page 15, [0110] where FAT file entry describes information about media content instance files, such as physical locations and filter is provided to user to seek media content for contemporaneous viewing).

As per claims 10 and 22, the combined teaching of the Plourde, Wenocur and Clements references further teaches “the additional data is stored in place of the first

data beginning with the first data block and continuing with successive data blocks of the first virtual file” (See Plourde: Page 11, [0089] where succeeding clusters for temporarily buffered media content instance files are streamed and stored in time shift buffer space).

As per claims 11 and 23, the combined teaching of the Plourde, Wenocur and Clements references further teaches “if the container file size is within the predetermined range of the identified maximum buffer size, the seek index granularity is increased so as to increase data block size without changing the number of seek index entries” (See Plourde: Page 12, [0097] where time shift buffer size is set and free space is tracked, and Clements: [0018] where all storage resource allocated is tracked).

***Allowable Subject Matter***

5. Claims 12 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome if any rejections(s) under 35 U.S.C. § 101 and 35 U.S.C. § 112, and in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claim 1-24 have been fully considered, please see discussions below:

**At Pages 7-14, concerning claims 1 and 13, in a lengthy descriptions, Applicant argued that Examiner failed to establish a *prima facie* case of obviousness, and further**

agued that "Office personnel has the burden to meet three basic criteria. First, Office personnel must show that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the reference teachings. The teaching or suggestion to make the claimed combination must be found in the prior art, not based on applicant's disclosure. Second, Office personnel must show that the teachings in the prior art have a reasonable expectation of success. Finally, Office personnel must show that the combined prior art references teach or suggest all the claim limitations. See MPEP § 2142.

Claims 1-11 and 13-23 were rejected under 35 U.S.C. § 103(a) as being rendered obvious by Clements in view of Plourde. Applicants respectfully submit that the Office Action has failed to state a prima facie case of obviousness for at least the following reasons. Clements in view of Plourde does not teach or suggest "temporarily storing additional data from the first data stream in place of at least a portion of the first data...", as claimed in Claim 1.

Claim 1, as currently amended, recites as follows:

A method of storing streamed presentation data within a container file, the method executing on a consumer digital content playback device, the method comprising:  
receiving one or more data streams from each of one or more  
presentation sources within the presentation;  
**Bobrovskiy, et al. - Method and Apparatus**  
creating within the container file, a virtual file for each of the one or

**more presentation sources;**

**temporarily storing first data associated with a first data stream of a**

**first presentation source in association with a first virtual file corresponding to the presentation source;**

**determining a container file size of the container file; temporarily storing additional data from the first data stream in place of at least a portion of the first data if the container file size is within a predetermined range of an identified maximum buffer size; and rendering at least one of said one or more data streams.**

**Applicants respectfully submit that Claim 1 is not obvious considering Clements in view of Plourde because neither reference, alone or in combination, teaches or suggests, "temporarily storing first data associated with a first data stream... [and] temporarily storing additional data from the first data stream in place of at least a portion of the first data if the container file size is within a predetermined range of an identified maximum buffer size." In other words, Claim 1 claims that a portion of first data from stream 1 is overwritten when additional data from stream 1 is stored in its place. For example, according to this element of Claim 1, if space is needed in the container file to store data from the end of a stream, previously stored data from earlier parts of the same stream may be overwritten by the later-received data.**

**Plourde, by contrast teaches merely that a previously stored media content file may be deleted to make space for a completely different media content file. See, e.g., ~[ 0100], "A new 'A/V file x+5' 406 is created for the 10:00 media content instance ....Shortly... the [time shift buffer] capacity will be exceeded. Thus, the PVR application 377 looks for the**

earliest management file designated as temporary." In the cited example, the 7:00 media content instance file, "A/V file x+l," is the earliest file stored in the time shift buffer, and additional space is needed to store a new 10:00 media content instance file. Plourde goes on to explain that "[b]ecause 'A/V file x+l' 402 [is designated as] temporary, 'A/V file x+l' 402 is now deleted ...."Id. Thus, Plourde teaches that a first media content file (x+l) may be deleted to make space for a second media content file (x+5). However, Plourde does not teach or even suggest that a portion of a first media content file may be overwritten by additional data from that same first media content file, as claimed in Claim 1. Clement does not remedy this defect.

**Bobrovskiy, et al. - Method and Apparatus**

For at least the reasons stated above, Applicants respectfully submit that the Office Action has failed to state a prima facie case that Claim 1 is obvious in light of Clements in view of Plourde.

One of ordinary skill in the art would have had no motivation to combine the teachings of Clements with those of Plourde to meet the invention claimed in Claim 1.

In the Office Action, the remaining elements of Claim 1 are said to be obvious in light of Clements in view of Plourde. However, in addition to the defects of Clements discussed at length above, Applicants respectfully submit that one of ordinary skill in the art would have had no motivation to combine the teachings of Clements with those of Plourde.

Recently, the Patent Office published the "Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR



**International Co. v. Teleflex Inc.," 72 Fed. Reg. 57,526 (Oct. 10, 2007), which states as follows:**

**The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."**

**Id. at 57,528-29 (quoting KSR International Co. v. Teleflex Inc., 550 U.S. at -, 82 USPQ2d at 1396). The new examination guidelines go on to state that to make a § 103(a) rejection such as in the present case, "Office personnel must..., articulate..., a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." Id. at 57,534.**

**These guidelines reflect the well-established principle that the prior art must suggest the desirability of the claimed invention. MPEP 2143.01. Obviousness can only be established where there is some teaching, suggestion, or motivation to combine or modify the teachings of the prior art to produce the claimed invention. In re Kahn, 441 F.3d 977,986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (emphasis added). See also KSR Intern. Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007) (explaining that it is generally "important to identify a reason that would have prompted a person of ordinary skill in**

**the relevant field to combine the elements in the way the claimed new invention does" (emphasis added)).**

**Applicants respectfully submit that the Office Action failed to meet this standard. In asserting that one of ordinary skill would have been motivated to combine the teachings of Clements with those of Plourde, the Office Action states as follows: It would have been obvious to one having ordinary skill in the art at the time of the applicant' s invention was made to combine the teaching of Plourde with Clements reference by implementing a secure document repository to accommodate a delivery of specific type of documents to a specific category of users because both reference are directed to media content distribution and the combined teaching of the references would have provided a media distribution system capable of accurately calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories.**

**Page 4 (emphasis added). However, there are a number of problems with this asserted motivation.**

**Motivation is lacking because neither Clements nor Plourde is "directed to media content distribution."**

**First, the asserted motivation is simply inaccurate. In fact, neither reference can be said to be "directed to media content distribution." Clements refers to itself as a "document distribution system," but Clements never mentions "media" in the sense of audio or video. In fact, Clements has little or nothing to do with media distribution, being directed towards a central repository for computer files that can be accessed across a**

network. Theoretically, users might store media files in Clements's repository, but Clements has at best only an incidental relationship to media. Conversely, Plourde is directed towards media, but not towards media distribution. Rather, Plourde receives and time shifts media for one particular household. Media is not distributed anywhere; it remains on Plourde's hard drive.

Motivation is lacking because neither reference suggests the desirability of making a combination.

Second, the asserted motivation fails to identify a reason that would have motivated one of ordinary skill to combine Clements with Plourde in order to produce the invention claimed in Claim 1. For example, there is absolutely no suggestion in Clements that its

teachings would have any relation to a time-shifting video recorder, as is disclosed in Plourde. Clements is directed towards mechanisms to improve "paperless" communications between businesses and their customers, and more specifically, towards managing large online data stores that can be accessed by multiple individuals. See ~[ 0006-0007]. Clements never even mentions video, audio, or streaming media of any description, and Clements certainly contains no suggestion that there would be any advantage to combining its teachings with any sort of media playback device. Similarly, Plourde is concerned entirely with storing documents on a local hard drive, to be accessed by a single user, and contains no suggestion that there would be a benefit to combining its teachings with a multi-user online data repository, such as Clements. Accordingly, Applicants respectfully submit that it would not have

been at all obvious for one of ordinary skill to combine the teachings of Clements with those of Plourde.

**Motivation is lacking because Clements is not directed towards consumer media playback devices.**

Claim 1 has been amended to clarify that the steps comprising the method take place on a consumer digital content playback device, such as "wireless mobile phones, palm sized personal digital assistants, notebook computers, desktop computers, set-top boxes, and game consoles." See ~[ [0037].

Applicant respectfully submits that the preamble to Claim 1 specifically characterizes the scope of the claim to operations that take place in a "consumer digital content playback device." See, e.g., *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995) ("[A] claim preamble has the import that the claim as a whole suggests for it."); *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999) ("If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim.").

Considering this clarification of the scope of Claim 1, Clements is not an analogous reference, being directed towards a server-based central repository in which business users can store and access computer files. See Clements ~[ [0007]. Thus, the disclosures in Bobrovskiy, et al. - Method and Apparatus Clements are directed towards

operations that take place on a "central data repository" or server, not a consumer playback device. As such, one of ordinary skill in the art would have had no motivation to combine Clements with Plourde to arrive at a method executing on a consumer media playback device, as claimed in Claim 1.

Motivation is lacking because Clements is not directed towards "receiving one or more data streams."

Clements is also not an analogous reference because it is not directed towards the type of data "streams" that are claimed in Claim 1. In the Office Action, Clements is said to teach "receiving one or more data streams from each of one or more presentation sources within the presentation," as was previously claimed in Claim 1. As noted by the Office Action, Clements does also use the term "stream." However, the context surrounding its use of that term indicates that Clements is using "stream" in an entirely different manner from Claim 1. Specifically, Clements uses the term as an abstraction to refer to a method of communication with an Input/Output device or process. See, e.g., Harry Newton, Newton's Telecom Dictionary 654 (1998) ("STREAMS An architecture introduced in Unix System V, Release 3.2 that provides for flexible and layered communication paths between processes (programs) and device drivers."). For example, Clements discloses that various technical mechanisms can be used to store data in a container file, mechanisms such as "streams, files, objects ...."

Clements ~[ [0078]. In ~[ [0078], [0079], and [0084], Clements states several times that properties may be "stored as a single stream, file, object, or the like." Thus, every use of the term "stream" in Clements refers to an Input/Output stream associated with an open

**file or device.**

**Claim 1, however, uses the term "streams" quite differently, referring to data (often media) that may be rendered incrementally, as it is provided. This meaning is spelled out in the specification. See ~[ 0003] (the "client device receiving the data should be able to collect the data and send it as a steady stream to the appropriate processing logic equipped to convert the data to sound and/or pictures."). It is always necessary to review the specification to determine exactly how the inventor has used any particular terms. Vitronics Corp. v. Conceptronic, 90 F.3d 1576, 1583, 39 U.S.P.Q.2D (BNA) 1573 (Fed. Cir. 1996). The specification acts as a dictionary when it expressly defines terms used in the claims or when**

**it defines terms by implication. Markman v. Westview Instruments, Inc., 52 F.3d 967,979, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). As the Federal Circuit has repeatedly stated, "claims must be read in view of the specification, of which they are a part." See id. at 979, 34 USPQ2d at 1329. The specification is the single best guide to the meaning of a disputed term. Vitronics, 90 F.3d at 1583.**

**Claim 1' s use of the term "streams" is also in accordance with the ordinary meaning of the term. See, e.g., Philip E. Margolis, Computer & Internet Dictionary 531 (3rd ed. 1999) ("STREAMING A technique for transferring data such that it can be processed as a... continuous stream .....**

**[T]he client..., can start displaying the data before the entire file has been transmitted.**

**[T]he client..., collect[s] the data and send[s] it as a steady stream to... convert[] it to sound or pictures.").**

**Because Clements is not directed towards "streams" of data that may be rendered incrementally, as the term is used in Claim 1, Applicants respectfully submit that one of ordinary skill in the art would have had no motivation to combine Clements with Plourde in order to arrive at the invention claimed in Claim 1**

**Motivation is lacking because a combination of Clements with Plourde would not resemble Claim 1.**

**Finally, even if one of ordinary skill were inexplicably motivated to combine Clements with Plourde, the resulting invention would not even vaguely resemble that claimed in Claim 1. The Office Action asserts that one would combine Clements and Plourde to achieve a "secure document repository to accommodate a delivery of specific type of documents to a specific category of users..., capable of accurately calculating storage capacity, efficiently storing contents to storage devices and specifically distributing content in according to content types and user categories." Even if this assertion is correct, it does not render Claim 1 obvious because Claim 1 does not even vaguely resemble the asserted combination. Claim 1 is not directed towards secure document repositories; Claim 1 is not directed towards different categories of users; Claim 1 is not directed towards distributing content. In short, according to the Office Action, the combination of Clements and Plourde would not lead to the invention claimed in Claim 1, but to some other invention related to secure distribution of content to different categories of users. skill would not have been motivated to combine Clements and Plourde to produce the invention claimed in Claim 1, and it cannot be said that Claim 1 is obvious in light of Clements in view of Plourde".**

Concerning the above argument, please note a new Wenocur reference has been introduced for providing teaching to the newly amended subject matter. Examiner respectfully submits that a *prima facie* case of obviousness has been established by motivations as described for combining the teaching of Wenocur and Clements references, and, Plorde, Wenocur and Clements references, respectively.

**At Pages 14-16, concerning claims 2-24, Applicant continued to argue that  
"Claims 2-12 and 14-24 are allowable at least by dependency."**

**Claims 2-12 and 14-24 are allowable at least because they depend from allowable independent claims. However, there are additional bases on which Claims 2-12 and 14-24 are patentably distinguishable over the prior art of record.**

**Claims 3 and 15 are not taught or suggested by Clements in view of Plourde.**

**For a first example, Clements in view of Plourde does not teach or suggest "temporarily storing second data associated with a second data stream of the first presentation source in association with the first virtual file," as claimed in Claims 3 and 15. The Office Action appears to suggest that Plourde teaches this element by describing a process in which media content instance files are temporarily stored in a time shift buffer made up of succeeding clusters. While Plourde may thus disclose "temporarily" and "storing," Applicants respectfully submit that neither Plourde nor Clements, alone or in combination, even begins to teach or suggest "...second data associated with a second data**



**stream of the first presentation source .... "**

**In addition, Clements in view of Plourde does not teach or suggest "temporarily store additional data from the second data stream in place of at least a portion of the second data stored in association with the first virtual file if the container file size is within the predetermined range of the identified maximum buffer size," as further claimed in Claims 3 and 15. As discussed above, Plourde teaches merely that a later "media content instance" may over-write an earlier "media content instance" if an overall buffer size is exceeded. By similar reasoning, Plourde does not teach or even suggest storing additional data from the second data stream in place of at least a portion of the second data (from the second data stream) stored in association with the first virtual file if the container file size is within the predetermined range of the identified maximum buffer size. Applicants respectfully submit that neither Plourde nor Clements, alone or in combination, even begins to teach or suggest "additional data from the second data stream in place of at least a portion of the second data stored .... " as claimed in Claims 3 and 15.**

**For the reasons just discussed, Applicants respectfully submit that the Office Action has not stated a prima facie case of obviousness for Claims 3 and 15. Accordingly, Applicants respectfully submit that Claims 3 and 15 are in condition for allowance. Claims 5 and 17 are not taught or suggested by Clements in view of Plourde.**

**For a second example, Clements in view of Plourde does not teach or suggest, temporarily storing data associated with a third data stream of a second presentation source in association with a second virtual file; and temporarily storing additional data**

from the third data stream in place of at least a portion of the data stored in association with the second virtual file if the container file size is within the predetermined range of the identified maximum buffer size,  
as claimed in Claims 5 and 17. As discussed above, Plourde teaches merely that a later "media content instance" may over-write an earlier "media content instance", not that a third stream of a second presentation source may be stored in association with a second virtual file. Applicants respectfully submit that the Office Action has not stated a prima facie case of obviousness for Claims 5 and 17 and that Claims 5 and 17 are in condition for allowance.

**Claims 6 and 18 are not taught or suggested by Clements in view of Plourde.**

For a third example, Clements in view of Plourde does not teach or suggest, "the maximum buffer size is proportional to an amount of time indicated via a user interface," as claimed in Claims 6 and 18. The referenced section of Plourde teaches merely that the capacity of a buffer may be estimated. However, neither Plourde nor Clements, alone or in combination, teaches or even suggests a buffer size is proportional to an amount of time indicated via a user interface, as claimed in Claims 6 and 18. Applicants respectfully submit that the Office Action has not stated a prima facie case of obviousness for Claims 6 and 18 and that Claims 6 and 18 are in condition for allowance.

**Claims 7 and 19 are not taught or suggested by Clements in view of Plourde.**

For a fourth example, Clements in view of Plourde does not teach or suggest, "the maximum buffer size is dynamically increased during the storing of data from the first

data stream," as claimed in Claims 7 and 19. The referenced sections of Plourde and Clements teach merely that free space and file size may be tracked. However, neither Plourde not Clements, alone or in combination, teaches or even suggests a buffer size is dynamically increased, let alone that it is dynamically increased, during the storing of data from the first data stream, as claimed in Claims 7 and 19. Applicants respectfully submit that the Office Action has not stated a prima facie case of obviousness for Claims 7 and 19 and that Claims 7 and 19 are in condition for allowance.

Claims 9 and 21 (and I 1 and 23) are not taught or suggested by Clements in view of Plourde. For a fifth example, Clements in view of Plourde does not teach or suggest, "each virtual file comprises.., a seek index and a seek index granularity, wherein the seek index indicates a plurality of equally distributed data blocks within the corresponding virtual file and the granularity indicates a size for each of the data blocks," as claimed in Claims 9 and 21. The referenced sections of Plourde teaches merely that a File Allocation Table on a hard drive keeps track of document locations and that users may search out media content based on various filters. Plourde does not teach or suggest a virtual file, let alone that each virtual file (not merely one hard drive with a FAT) comprises an individual seek index and an individual seek index granularity, as claimed in Claims 9 and 21. Furthermore, while Plourde admittedly uses the work "seek," neither Plourde not Clements, alone or in combination, teaches or even suggests "the seek index indicates a plurality of equally distributed data blocks within the corresponding virtual file and the granularity indicates a size for each of the data blocks," as claimed in Claims 9 and 21. Applicants respectfully submit that the

**Office Action has not stated a prima facie case of obviousness for Claims 9 and 21 and that Claims 9 and 21 are in condition for allowance.**

**To the extent that Claims 11 and 23 also refer to the seek index granularity just discussed, Claims 11 and 23 are in condition for allowance by similar reasoning.**

**Applicants can discern nothing in the prior art made of reference and not relied upon that would, when read as a whole, anticipate or render obvious any of Claims 1-24.”**

With respect to the above arguments, Examiner respectfully maintains the grounds as set forth for rejecting the claims.

### ***References***

#### **7.1. The prior art made of record**

- A. U.S. Patent Application 2003/0110504
- F. U.S. Patent Application 2002/0147739
- G. U.S. Patent Application 2002/0165912

#### **7.2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.**

- B. U.S. Patent No. 6,205,525
- C. U.S. Patent Application 2004/0193648
- D. U.S. Patent No. 6,449,653
- E. U.S. Patent No. 5,933,385

### ***Conclusion***

**8. Applicant's amendment necessitated the new grounds of rejection presented in this**

Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kuen S. Lu whose telephone number is (571)-272-4114. The examiner can normally be reached on Monday-Friday (8:00 am-5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Cottingham can be reached on (571)-272-7079. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for Page 13 published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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KUEN S. LU,

July 22, 2008

Primary Examiner

Art Unit 2167

/Kuen S Lu/  
Primary Examiner, Art Unit 2167